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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of inventor(s):

MILLS, Matthew

Serial Number: 10/774,707

Examiner: ROANE, A

Filed: 02/09/2004

Art Unit: 3739

Confirmation No.: 9540

For: **THERMAL DEVICE**

MAIL STOP AMENDMENT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT OFFICE ACTION DATED 06/20/2005

Dear Sir:

Responsive to the Office Action restriction requirement dated June 20, 2005, Applicant provisionally elects to prosecute Group I, corresponding to Claims 1 - 6, 12 - 19, and 22 inclusive, as indicated by the Examiner, but traverses the restriction requirement.

It is respectfully submitted that the restriction requirement is improper and should be withdrawn. All the claims in the application are closely related and should and could be examined together for reasons of efficiency and economy and to avoid a later charge of double patenting. Furthermore, the Examiner has failed to show that there would be a "serious burden" if all the figures were examined together. "If the search and examination of an entire

application can be made without serious burden, the Examiner must examine it on the merits even thought it includes claims to distinct or independent invention." (M.P.E.P. § 803).

Furthermore, in *In re Lee*, 199 U.S.P.Q. (BNA) 108 (Comm'r Pat. & Trademarks 1978), in a restriction requirement situation, the Commissioner stated:

"... it is important from the standpoint of public interest that no restriction requirements be made which might result in the issuance of two patents of the same invention. The nullification of double patenting as a ground of rejection provided for in the third sentence of 35 U.S.C. 121 imposes a heavy burden on the Office to guard against erroneous requirements for restriction where the claims define essentially the same invention and which if acquiesced in might result in more than one patent for essentially the same invention with attendant prolongation of patent monopoly."

In the instant case, it is submitted that there is but a single invention with respect to the thermal device of the present invention and that all embodiments in the present application have the same inventive concept in common, differing only in incidental design aspects which do not detract from the overall design concept.

The Examiner is respectfully requested to reconsider the restriction requirements in view of the foregoing.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or

other meaningful discussion of the case, Applicant invites the Examiner to contact Applicant's representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for allowance; and Applicant respectfully requests the Examiner to pass the application on to allowance. It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

 CISLO & THOMAS LLP

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Date: July 12, 2005

DMC/ASJ

Enclosure

Acknowledgement Postcard

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PATENT
Appl. No. 10/774,707
Amdt. dated July 14, 2005
Reply to Office action of 06/20/2005
04-13161



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Daniel M. Cislo, Reg. No. 32,973

7-12-05

Date

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